IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

RSA.No. 366 of 2007()

AS.98/1992 of SUB COURT, TIRUR
OS.40/1990 of MUNSIFF COURT, TIRUR

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: APPELLANTS/APPELLANTS 2 TO 8/DEFENDANTS
2 TO 4 AND THE LEGAL REPRESENTATIVES OF THE 1ST DEFENDANT

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1. RAMACHANDRAN, S/O.BHARAGAVI KOVIL,
KUTTIPPURAM AMSOM, PERASSANNUR DESOM,
TIRUR TALUK, MALAPPURAM DISTRICT.

2. UNNIKRISHNAN, S/O.BHARGAVI KOVIL,
OF DO. DO.

3. RADHAKRISHNAN, S/O.BHARGAVI KOVIL,
OF DO. DO.,
AT PRESENT EMPLOYED IN BAHRAIN.

4. SASIDHARAN, S/O.BHARGAVI KOVIL,
OF DO. DO.

5. MOHANAN, S/O.BHARGAVI KOVIL,
DO. DO.

6. DEVAKI KOVIL,
D/O.BHARGAVI KOVIL,
OF DO. DO.

7. GEETHA BALAKRISHNAN,
D/O.BHARGAVI KOVIL,
OF DO. DO.

BY ADV. SRI.P.G.RAJAGOPALAN
SRI.M.GOPIKRISHNAN NAMBIAR

RESPONDENTS: RESPONDENTS 3 TO 5/LEGAL HEIRS OF THE 1ST DEFENDANT

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1. RADHIKA,
   D/O.MARATH RAMACHANDRAN NAIR,
   'NEELANJANAM', NEAR VAIDHUDHI BHAVAN,
   RAGAMALIKAPURAM, KOTTAPPURAM,
   THRISSUR DISTRICT.

2. RENUKA, D/O.MARATH RAMACHANDRAN NAIR,
   OF DO. DO.

3. MAMMILIYATH THANKAM,
   W/O.MARATH RAMACHANDRAN NAIR,
   OF DO. DO.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO.366 OF 2007

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Dated this the 8th day of June, 2007

JUDGMENT

Defendants 2 to 4 who are the legal representatives of deceased first defendant in O.S.40/1990 on the file of Munsiff Court, Tirur are the appellants. Respondents are the legal heirs of deceased plaintiff. Plaintiff instituted the suit seeking a decree for injunction contending that plaint schedule property was set apart to her share as per partition deed No.1256/1959 of S.R.O. Kuttippuram and she has been exclusive possession and enjoyment of the property and defendants who are the wife and children of Sivaramakrishnan Nair brother of the plaintiff, are not having any right title or possession of the property and they attempted to trespass into the property and they have no right to do so and therefore a decree for permanent prohibitory injunction is to be granted. Defendants in the written statement contended that

the plaintiff is not in possession of the property and plaint schedule property was handedover by the plaintiff in favour of the predecessor in interest of the defendants by virtue of Ext.B1 agreement dated 15.7.1976 and they are in absolute possession and enjoyment of the property and therefore plaintiff is not entitled to the decree sought for.

2. Learned Munsuff framed the necessary issues. On the evidence of PW1 and and DW1 and Exts.A1 and A2 and Ext.B1 and C1 and C2, learned Munsiff granted a decree holding that respondents have established their possession by the oral evidence of PW1 and Exts.A1 and A2 and defendants did not establish their possession and therefore respondents are entitled to the decree for injunction sought for. The suit was decreed. Defendants challenged the decree and judgment before Sub Court, Tirur in A.S.98/92. Learned Sub Judge on reappreciation of evidence, confirmed the findings of the trial court and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellants argued that both the courts have erred in considering the evidence on the side of the appellants in the proper perspective and without considering the question of possession and ignoring the fact that in a suit for injunction, the burden is on the plaintiff to establish possession of the disputed property decree was granted and on the evidence courts below should have found that respondents are not entitled to the decree granted.

4. On hearing the learned counsel appearing for appellants, I do not find any substantial question of law involved in the appeal.

5. Both the trial court and the first Appellate Court, after appreciation of the evidence, found that respondents established their possession obtained by second plaintiff under the registered partition deed 1256/1959, which was admitted by the appellants themselves. What was contended by the appellants was that by virtue of

Ext.B1 agreement, the predecessor in interest of the defendants were put in possession of the property. On appreciating the entire evidence, courts below found that the said case is not correct and second plaintiff continued to be in possession of the property and appellants are therefore entitled to the decree for injunction sought for. This factual finding cannot be interfered in exercise of the powers of this Court under section 100 of C.P.C. No substantial question of law involved in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006